MONTANA LEGISLATIVE HISTORY

Chapter 493 19 75

Bill H 531 S _____ Original bill & history ____C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 25	✓ C	Hearing Date(s) Mar 12	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Feb 25	✓ C	Mar 12	✓ C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

House BILL NO. 531

INTRODUCED BY [signature]

A BILL FOR AN ACT ENTITLED: "AN ACT TO AWARD COSTS AND REASONABLE ATTORNEYS' FEES TO A PLAINTIFF WHO BRINGS A SUCCESSFUL ACTION UNDER THE RIGHT TO KNOW PROVISION OF THE MONTANA CONSTITUTION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought to enforce his rights under Article II, section 9 of the Montana constitution shall be awarded his costs and reasonable attorneys' fees.

-End-

The opponents provided committee with forty letters in opposition to this bill. Other opponents testifying were Joyce Baker, Phil Rostad, a rancher and Kenneth Voldseth. Opponent Gorham Swanberg, representing the Montana Railroad Association, stated that three railroads together own three quarters of a million acres in Montana. All forest land west of the divide has not been posted and they would like to leave it this way but with this bill they would have to post their land. They would like to leave their land open to the public. Opponent Bob Gilbert, representing the Montana Wool and Stock Growers Association, stated he concurred with the previous testimony. They will have to post land to protect private property rights.

Opponent Bill Sternhagen, representing the Anaconda Company stated this bill has two technical problems. Under both federal and state constitutions there is a due process requirement. This bill doesn't give due process. Also a technical problem is that this bill is retrospective law. Opponent Gene Spielde, representing the Sweetgrass Reservation Association, stated their members have tried to have a good relationship with sportsmen.

Opponent John Bell, representing the Clerk and Recorders Association, stated he finds nothing wrong with placing the burden of proof on the public and resents effort to shift it to the property owners.

Representative Luebeck, in closing, stated he will ask the committee to indefinitely postpone this bill. The purpose of the bill was to dramatize the situation and Representative Vincent will introduce a joint resolution to this effect. He stated that if the county officials really cared about the problem they could help us. The local ranchers could bring pressure on the county officials for help on this. It is very obvious that people from the urban areas have a majority. This is a matter of private rights opposed to public rights.

Representative Vincent stated the people here today are not the people this bill is aimed at. They will go into urban and rural communities and will ask for participation in this problem.

Hearing was then closed.

HOUSE BILL NO. 531 Representative Mike Meloy, District #29, is chief sponsor of this act to award costs and reasonable attorneys' fees to a plaintiff who brings a successful action under the right to know provision of the Montana Constitution. He stated this bill is history. It provides 1) the right to participate; 2) the right to observe open meeting; 3) attempts to implement the right to participate. The bill essentially permits a person who sues under the right to know provision to get attorneys' fees if he wins.

Proponent Sam Gilluly, representing the Montana Press Association, provided committee with prepared statement. He also provided committee with prepared statement from George Remington, editor of the Independent Record in favor of the bill. He stated that newspapers don't have the money to keep suing.

Opponent Bill Sternhagen, representing the Anaconda Company, stated the Constitution provides "clearly exceeds the merits of public disclosure". He stated that in this state and in the United States whatever is good for the goose is good for the gander. He sincerely asked the committee to consider an amendment after the word "fees" on line 14, page 1 which would read: "; provided if he does not prevail he shall pay the costs and reasonable attorney fees of the public body or agency of state government or its subdivisions, and/or any other successful party.".

Representative Meloy, in closing, stated the amendment permits the state public today or agency to get attorney fees. The other most common state is "mandamus action" in which a person brings action to compel state agencies that the party is entitled to reasonable attorney fees. In existing mandamus action the state is not entitled to get attorney fees. A couple other statutes, the federal clean air and clean water acts allow for attorney fees. The reason for this is that the state of Montana has an obligation to follow the law imposed on them. This places a greater responsibility on the state to follow the laws imposed on them. This will act as a double incentive to keep documents under cover.

Representative Yardley questioned if in condemnation cases with the Highway Department if they don't prevail should they have to pay the attorney fees to which Bill Sternhagen replied no, without this amendment the bill will cause a flood of litigation. Representative Vincent questioned other restraints besides a monetary loss and was advised another restraint might be a consistent loss record.

There were no other questions from committee members and the hearing was closed.

HOUSE BILL NO. 567 Representative James Moore, District #18, is chief sponsor of this act to require the attorney general and county attorneys in prosecutions resulting from legislative audits, to turn over investigative materials to the Supreme Court in cases of suspected unethical conduct by attorneys. He stated this is important in the Workmen's Compensation investigation. The records will be turned over to the ethics committee. As a young attorney he is already under the stigma of what has happened. Their disesteem would be quadrupled if the WCD also fails. The Commission on Practices Acts is under the Code of Ethics. They can censure and disbar an attorney.

HOUSE BILL NO. 455 Representative Moore moved DO PASS. Motion carried with Representatives Yardley, Hager, Lory and Anderson voting no. Representative Yardley stated that what the Supreme Court does in Montana is very traditional. Chairman Huennekens stated it is fine that Montana leads the way.

HOUSE BILL NO. 531 Representative Yardley moved DO PASS. Motion carried unanimously with no discussion.

HOUSE BILL NO. 567 Representative Scully moved DO PASS. Motion carried unanimously.

HOUSE JOINT RESOLUTION NO. 42 Representative Scully moved DO PASS. Motion carried unanimously.

All business being concluded and all house bills having been acted upon before the deadline, the meeting adjourned at 10:45 AM.

Herb Huennekens

REPRESENTATIVE HERB HUENNEKENS
CHAIRMAN

HH:pb

HB 613 -- Jim Pippard, a social worker in the Human Services Bureau of the Dept. of Social & Rehabilitation Services, supported the bill and gave an example of an adoption in the "gray area" which would be affected by the bill in that a petition would be required to be sent to the department for review.

There were no further proponents and no opponents to the bill.

HB 531 -- HB 531, sponsored by Representative Mike Meloy, District 29, was heard next. Rep. Meloy stated that the purpose of the bill was to implement the right to know provisions of the Montana Constitution by guaranteeing the public the right to examine documents of public agencies. He stated that the bill was introduced last year by Rep. Greely, was passed in the House and killed in the Senate. He stated that the bill simply awards costs and attorney's fees to a plaintiff who wins a court case relating to access to public records.

George Remington, publisher of the Helena Independent Record, submitted written testimony in support of the bill (attached).

Sam Gilluly, representing the Montana Press Assn., added his support for the bill and submitted written testimony (attached).

Bill Sternhagen, representing himself, stated that he supported the bill if an amendment that he proposed (attached) were adopted.

In closing, Rep. Meloy stated that if the plaintiff loses his case he would be required to pay his own attorney's fees.

There were no further proponents and no opponents to the bill.

Following the hearing of bills, the Committee went into Executive Session.

EXECUTIVE SESSION

HB 5 -- Senator Cetrone moved that HB 5 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 455 -- Senator Turnage moved that HB 455 be concurred in. The motion was postponed to consider amendments.

Senator Greely made a substitute motion that HB 455 be amended by adding a new sentence at the end of the bill on line 15 (attached). WITH SENATOR ROBERTS AND SENATOR DRAKE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 455 -- Senator Greely moved to amend HB 455 on line 14 (attached). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

A vote was taken on the original motion of Senator Turnage. WITH SENATORS ROBERTS AND DRAKE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 531 -- Senator Turnage moved to amend HB 531 on page 1, line 12 (attached). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved that HB 531 be concurred in as amended. WITH SENATOR BROWN AND SENATOR DRAKE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 262 -- A subcommittee was appointed to consider HB 262. Senator Greely was appointed chairman, and Senator Turnage and Senator Warden were the other members.

HJR 42 -- Senator Turnage moved that HJR 42 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 354 -- The committee researcher was assigned to poll district judges as to their feelings on who should set the salaries of court reporters: 1) county commissioners, 2) the district judges themselves, or 3) the legislature.

HB 468 -- Senator Turnage moved that HB 468 be not concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 367 -- The Committee researcher was assigned to work out amendments to HB 367.

HB 463 -- Senator Drake moved to amend HB 463 on lines 13 and 14 (attached). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Warden moved that HB 463 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 311 -- Senator Roberts moved that HB 311 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

There being no further business, the committee adjourned until 9:30 A.M., March 13.

Thomas E. Towe, Chairman

ROLL CALL

Judiciary COMMITTEE

xSECOND xHALF - 44th LEGISLATIVE SESSION 1975 Date 3/12/75

NAME	PRESENT	ABSENT	EXCUSED
Thomas E. Towe	X		
Joe R. Roberts	X Jak		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

Each day attach to minutes

3/12

To: Judiciary Committee, Montana State Senate

Re: House Bill 531

Statement of: George D. Remington, publisher, The Independent Record, Helena, Montana. March 12, 1975.

This statement in support of House Bill 531 is made in my capacity as a publisher of a daily newspaper and as a member of the Freedom on Information Committee of the Montana Press Association.

In the 43rd Legislature, the Montana Press Association opposed a bill to implement the Right to Know provision in the Bill of Rights of Montana's new constitution. Our reason for opposing that measure was that we could see nothing in the bill that would discourage public officials from abusing the constitutional privilege by asserting that the right of individual privacy outweighed the public's right to know.

We felt it placed too much discretionary authority in the hands of the custodians of documents without providing any method of countering abuse of that authority, short of going through costly litigation every time a citizen was denied access to a public document.

It is obvious what a stifling effect this could have on the public's right to know. Recognizing that few individual citizens and small newspapers could afford to bring suit, bureaucrats who have custody of documents could thwart the constitution with impunity.

They could claim "individual privacy" as an excuse to cover up their mistakes or irregularities, as well as to protect their friends, relatives, superiors and elected officials.

House Bill 531 provides individual citizens and the press with a weapon to combat this kind of abuse. They still may have to go to court in an effort to gain access to public documents, but if they win they will be reimbursed for court costs and reasonable attorney fees.

I anticipate you will hear the argument that passage of this bill will lead to a deluge of court cases.

I think it will lead to very few---for this reason: Neither side is going to charge into litigation unless he is sure he will win, because if he loses he is stuck with costs and attorney fees.

A custodian of public documents is going to think twice about refusing access to those records if there is any likelihood of his agency will be saddled with the plaintiff's cost of litigation.

For the same reason, a citizen or a newspaper is unlikely to go to court with a weak case.

There is a strong economic incentive for each side to be sure of itself before engaging in legal congrontation.

In beautiful simplicity, House Bill 531 implements the constitutional Right to Know provision with adequate safeguards for all concerned. I hope you will give it favorable consideration.

3/12

STATEMENT IN SUPPORT OF HB 531 BEFORE SENATE JUDICIARY COMMITTEE AT HEARING HELD ON MARCH 12, 1975.

My name is Sam Gilluly and I represent the Montana Press Association.

HB 531 by Mr. Meloy is one of three bills--all of them seeking to fulfill the right-to-know clause in the 1972 Montana Constitution.

The bill is important to the Montana Press. Besides its constitutional application, we have had practical illustration of its need in recent Montana history in the civil action entitled Gazette Printing Company v Carden. You will recall that the Lee Newspapers and the Billings Gazette sought to obtain information through records in the Workmen's Compensation Division. The request was refused by James Carden, then Director, and the newspaper brought action against him. Mr. Carden's refusal was upheld in district court, but was overthrown in the Montana Supreme court.

The point to remember here was that the Gazette's suit was not for its own purposes or gain. It was purely in the public interest so that it could tell the public what it might uncover in the records. I have no idea what it cost the Gazette, but I am sure a conservative estimate would be $5,000. Not many newspapers in Montana, and certainly not this Press Association, would have the financial resources to fight for the public's right-to-know if such a situation should again develop.

Many newsmen in Montana, at some time, have encountered refusal of public records by a public official. I know I did, some years ago, in a case involving city records.

This bill will give the newspaper, if it is proven right in its search for the facts, a means of recovering legal costs. I urge your support.

3/12

AMENDMENT TO HOUSE BILL 531

Amend House Bill 531 as follows:

After the word "FEES" on line 14, page 1, add the following: "; PROVIDED IF HE DOES NOT PREVAIL HE SHALL PAY THE COSTS AND REASONABLE ATTORNEY FEES OF THE PUBLIC BODY OR AGENCY OF STATE GOVERNMENT OR ITS SUBDIVISIONS, AND/OR ANY OTHER SUCCESSFUL PARTY."

SENATE COMMITTEE JUDICIARY

Date 3/12/75 House Bill No. 531 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Rahyanec
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Turnage to amend page 1, line 12 (see attached committee report)

(include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/12/75 House Bill No. 531 Time

NAME	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V.E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN		X
GLEN L. DRAKE		X
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Rohyans
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Turnage that HB531 be concurred in as amended.

(include enough information on motion--put with yellow copy of committee report.)

HOUSE BILL NO. 531

INTRODUCED BY MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AWARD COSTS AND REASONABLE ATTORNEYS' FEES TO A PLAINTIFF WHO BRINGS A SUCCESSFUL ACTION UNDER THE RIGHT TO KNOW PROVISION OF THE MONTANA CONSTITUTION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Costs to plaintiff in certain actions to enforce constitutional right to know. A plaintiff who prevails in an action brought IN DISTRICT COURT to enforce his rights under Article II, section 9 of the Montana constitution ~~shall~~ MAY be awarded his costs and reasonable attorneys' fees.

-End-

HB 531

REFERENCE BILL 4/15/95
Second Printing - Governor's Amendments Included